THE NEUTRALIZATION OF THE SUEZ CANAL.

The Turkish Sultan, Mustapha III., is reported to have once remarked: "If a happy circumstance can dictate alterations in immutable laws, the canal from the Red Sea to the Mediterranean will one day become the basis of a new rule of international law." Mustapha's words were truly prophetic, for, to the student of international law and its history, the case of the Suez Canal presents an interesting and important example of the adaptation of the rules of international jurisprudence to altered conditions and changed circumstances. For, up to the third quarter of the last century, jurists were almost entirely silent regarding the legal status of artificial canals connecting two seas and utilized by the public and private vessels of several states. They have discussed alone the legal necessities of existing conditions, and consequently have had no occasion to deal with cases which, under then-existing conditions, could not arise. The Suez Canal was, at the time of its construction, a work so unique that it would be idle to consult the file of precedence in the hope of finding precept or rule such as would throw any light upon its legal position. But no small portion of the present body of international law has had its origin in the continual extension of simple principles to complex cases and in the detection of analogies between new and old sets of facts. The great but simple rules of Hugo Grotius respecting the freedom of the high seas have, in later centuries, received applications of which their author could have had no conception. The Congress of Vienna, for example, applied the principle to the chief rivers of Northeastern Europe, declaring that the Rhine, Meuse, Scheldt, Moselle and Elbe should be free to the vessels of all nations from the point at which they became navigable down to the sea, thus putting an end to the mass of vexatious regula-

tions and tolls which had hitherto rendered them practically useless as highways of trade. Similarly the principle of the immunity of non-combatant territory and of non-combatant persons has been extended to render immune certain works of international importance such as the artificial entrances at the mouths of the Danube, while the Geneva Convention applied the principle of immunity to surgeons, nurses and others whose intimate connection with combatants had hitherto deprived them of a neutral character. Political necessities, too, had at various times secured the perpetual immunity of whole states such as Luxemberg, Belgium and Switzerland.

The step from an international agreement for the immunity from hostile attack of territories, works and persons, to an agreement for the guarantee of like immunity to an interoceanic waterway of the greatest political and commercial importance to many states, was not a long one, and the Suez Canal had not been many years in operation when a movement with this end in view began. But movements of this kind—owing to the number and variety of the interests concerned—progress very slowly, and it was not until nearly two decades had passed that international agreement finally secured for the great waterway a full guarantee of immunity from belligerent operations under all circumstances whatsoever. And in view of the frequency with which, during the recent discussions upon the Hay-Pauncefote negotiations, the action of the Powers in regard to the Suez Canal has been seized upon and advanced as a precedent, it may be well to examine the history both of the canal construction and of the subsequent international negotiations, with a view to discovering whether or not all the essentials of a valid precedent are present.

The importance, commercially and strategically, of a navigable waterway across the Isthmus of Suez had long been recognized. As early as 1798 Bonaparte had caused the route to be surveyed, but his engineers reported the scheme

impracticable, giving as their reason that the Red Sea level was some thirty feet above that of the Mediterranean, and the project was consequently dropped. But about half a century later, a new survey served to show the complete inaccuracy of its predecessor, and a project for the construction of a canal was once more put forward. There was, moreover, another circumstance which rendered the prospects for the successful construction of such a work much more favorable than heretofore—the increased strength and stability of the Egyptian government. From the beginning of the century the political affairs of Egypt had never been satisfactory. On the departure of the French forces, Mehemet Ali had seized the reins of government and had in time been able to wring from the Sultan a more or less indefinite recognition of the authority which he had established in the country. Proving a successful ruler, Mehemet kept up a considerable military establishment, by means of which he was able to make important extensions of his territory. The Sultan, embarrassed with the Greek revolt, was unable to prevent these extensions until after the definite cession of Grecian independence, when an endeavor to curtail the powers of the Egyptian Pascha led to an open rupture. The Porte had, however, underestimated Mehemet's military resources, and the complete assertion of Egyptian independence was in 1832 only prevented by the intervention of Europe. But the Pascha, conscious of Turkish weakness, continued his aggressions till 1840, when he was definitely warned that the Powers would, under no conditions, allow the existence of a new independent Arab empire in the Levant. In that year, Lord Palmerston instructed the British agent at Cairo to warn Mehemet Ali that Great Britain would aid the Sultan in preventing any further extension of the Paschalic powers, and that orders had been given to the British fleet in this regard.[1] In this move

[1] Correspondence relating to the affairs of the Levant. Parliamentary Papers (1841), Part I, p. 502; Part II, pp. 5, 181.

Great Britain seems to have merely acted as spokesman for the other Powers, since the principles of international policy embodied in Lord Palmerston's despatch were fully carried into execution by the convention of London in 1840, whereby Great Britain, Austria, Prussia and Russia agreed to protect the Porte, by coercive measures if necessary, against aggression on the part of the Egyptian government. Accordingly Mehemet threw overboard his greater ambitions, and in 1841 received from the Sultan a firman which laid down specifically the limits of his territories and powers. This firman, which, though several times since amended, is still the legal basis of the khedival power in Egypt, was likewise submitted to the Powers and approved by them, it being at the same time understood that amending firmans should receive the same approval before going into effect. Some years later Lord Clarendon informed the British agent at Cairo "that the great Powers would not allow the Porte to abrogate or diminish the authority of the Khedive without their consent, while, likewise, they would prevent any attempt on the part of the Khedive to extend his authority without Turkish permission."

Thus, it was not till 1840 that the legal status of Egypt had become definitely fixed under the guarantee of the Powers; hence it was only then that the obtaining of a reliable charter to execute a great public work such as that of a canal across the Isthmus of Suez, became for the first time possible. During the course of the forties elaborate surveys were made, and in the early fifties definite proposals for the construction of the canal began to be put forward. Negotiations with the Khedive were undertaken by the French engineer, M. de Lesseps, and on January 5, 1856, these were concluded through the issue of a firman, by the terms of which de Lesseps was given power to form a company, to be called "*La Compagnie Universelle du Canal de Suez*," and to proceed with the work. The influence of Great Britain had, throughout the course of the negotiations, been

thrown against the proposals, as Lord Palmerston deemed that the construction of the canal would be very detrimental to British political and commercial interests. That it did not ultimately prove so was due no more to British commercial enterprise than to the lack of this quality among the people of certain continental countries, who otherwise might have turned the new route to their own advantage.

By the terms of the charter of 1856 the company was given certain territorial concessions for a period of ninety-nine years; was guaranteed the free use of a large amount of forced labor on the part of the fellaheen; and was given certain rights in regard to the construction of subsidiary fresh-water canals and works. In return the company was under obligation to execute the whole project at its own expense, the Egyptian government to be given, when the canal was in full operation, 15 per cent of the net annual earnings; the original shareholders 75 per cent and the promotors the remaining 10 per cent. On the expiration of the period for which the charter was granted, the canal with all its appurtenances was to become the property of the Egyptian government. And by Article 14 of the charter the right of free navigation under equal conditions was guaranteed to the ships of all nations.[1] It was this article which, some years later, was utilized by de Lesseps in an endeavor to prove that the canal had been "neutralized" by the terms of the company's charter. The terms of the charter were deemed satisfactory and the work of construction commenced. But at this point the Sultan stepped in and declared that those clauses in the charter which had made concessions of territory and which had placed the forced labor of the fellaheen at the company's disposal were *ultra*

[1] We solemnly declare, for ourselves and our successors, that the Grand Maritime Canal from Suez to Pelusium, and its dependent ports, shall be open forever, as *neutral passages* to all ships of commerce passing from one sea to the other, without any distinction, exclusion or preference of persons or nationalities, on payment of the dues and compliance with the regulations established by the Concessionary Universal Company for the use of the said canal and its dependencies.

vires of the Khedive. This turn in affairs caused a suspension of operations, the company making claim against the Egyptian government for damages consequent upon a breach of contract. However, the matter was submitted by both parties to Napoleon III., with the result that the Khedive was adjudged liable to pay the sum of £3,360,000 indemnity. The original capital of the company had been fixed at £8,000,000, of which sum the Khedive had himself subscribed about three-and-a-half millions, the balance being taken up by the various European financial houses in £20 shares. But by the time the canal was formally opened in 1869, successive issues had brought the total capital up to more than £17,000,000.

The opening of what M. Gambetta called "the carotid artery" between East and West was an event of great international importance, more especially to such of the European Powers as had territorial and commercial interests in Asia. Prominent among such was Great Britain, the government of which was not slow in realizing that the control of the canal by any other Power would constitute a grave menace to India. During the course of the Franco-Prussian war of 1870–71 no attempt was made by either Power to engage in belligerent operations within the limits of its waterway or ports, but the danger of such was, nevertheless, made apparent, and in 1873 an International Commission summoned at Constantinople on the invitation of the Sultan, agreed upon the general principle "that the navigation of the canal should *at all times* be equally enjoyed by the vessels of all nations." This declaration (6–14 December, 1873) was accepted by the Porte, by the president of the canal company and by the Powers, but it in no wise specifically prohibited belligerent acts within the waters of the canal and its approaches; nor did it serve to secure the waterway against a blockade in case the territorial power should become a belligerent. The inadequacy of the declaration was furthermore demonstrated in 1875, when complications

arose leading to a threat on the part of the company—which was entirely under French control—of closing the canal temporarily to *all* vessels; a threat which would probably have been carried into effect but for the prompt action of the Egyptian authorities. In view of this situation, the policy of the British government directed itself towards the obtaining of a controlling interest in the company through the purchase of shares, and on November 25, 1875, Disraeli played what proved to be a masterstroke in this direction by buying out, for the sum of £4,000,000, the shares held by the Khedive. This action on the part of the English minister was soundly criticised at home and roundly ridiculed abroad, but both politically and financially the investment proved a wise one, for the purchase made Great Britain the largest individual shareholder in the company, thus giving that Power an undeniable right to a voice in the general management of the canal, while at the same time the shares have greatly risen in marketable value.

Not long after this time the Russo-Turkish war of 1877 began, and there appeared a grave danger that the Mediterranean entrance to the canal would be blockaded by the Russian fleet. Anticipating such an eventuality, the British authorities informed the governments of Russia, Turkey and Egypt "that any attempt to blockade, or to otherwise interfere with the canal or its approaches, would be regarded by Her Majesty as a menace to India and as a grave injury to the commerce of the world." Further, the British note declared "that Her Majesty's government are firmly determined not to permit the canal to be made the scene of any combat or other warlike operations."[1] In reply Prince Gortchakoff declared "that Russia did not propose to blockade, interrupt or menace the canal in any way," but that, on the contrary, the Russian government considered the canal to be "an international work of such importance

[1] Derby to Lyons (Parliamentary Papers, June 5, 1877). The *Times*, June 6, 1877.

to the commerce of the world that it should remain untouched."

It was this danger and the attitude of Great Britain in regard thereto which led de Lesseps, as president of the canal company, to seize the moment as an opportune one for laying before the British ministry a project for the permanent protection of the freedom of the canal by an international agreement. He accordingly proposed to Lord Derby that the government of Great Britain should invite the chief Powers of Europe to give assent to the following declaration:

International Agreements as to the Passage of Ships of War through the Suez Canal.

"Since the opening of the Suez Canal, in 1869, the complete liberty of passage through the Maritime Canal and the ports connected with it has been respected for state vessels as well as for merchant ships, even on the part of belligerent Powers at the time of the Franco-Prussian war.

"The governments of . . . now agree to maintain the same liberty to all national and commercial vessels, whatever may be their flag, and without any exception: it being understood that national ships will be subject to the measures which the territorial authority may take to prevent ships in transit from embarking on Egyptian territory any troops or munitions of war."

The British Ministry did not, however, receive this proposal favorably, for after due consideration, reply was made to de Lesseps "that the scheme proposed for the neuralization of the canal by an international convention was open to so many objections of a political and practical character that they could not undertake to recommend it for the support of the Porte and the Powers." Lord Derby, some little time later, proposed to the French government that the public vessels of France and Great Britain should jointly patrol the canal and its approaches during the course of hostilities;

and this plan not commending itself to the authorities of the former Power, the Italian foreign office made suggestion of a temporary patrol by a fleet composed of vessels detached for this purpose by all the Powers.

As a matter of fact, the canal was not blockaded during the course of the Russo-Turkish war, but it would be difficult to deny that if Russia—against whom the Khedive had furnished a quota of troops to the Ottoman army—had deemed fit to adopt this method of inflicting an injury upon a belligerent, she would have been quite within her rights at international law in so doing.[1] The position assumed by Great Britain rested—as Sir Robert Phillimore has shown—upon no other basis than that of political and commercial self-interest, together with her ability as the predominant naval power, to make her dicta in the matter respected. It is true that the charter of concession to the canal company (January 5, 1856) had guaranteed the *neutral passage* of the canal to all ships of commerce without distinction of flag. But that the Egyptian government had not, even as between the company and itself, contemplated the immunity of the canal from hostile operations may be seen by reference to another article in the charter (Art. 10), wherein it was provided that the military authorities of Egypt should have at all times the right to occupy strategic positions on the canal banks. Furthermore, no government could—even if it so desired—have divested itself of any of the responsibilities of belligerency through a private contract with a chartered company. The Declaration of Constantinople (December 14, 1873) likewise provided for the *equal*, not for the *free*, use of the canal by the ships of all nations, and the existence of a blockade, shutting out all vessels alike, would have been in no sense a violation of the principle of equality which the Declaration enjoined. This latter had not prevented the canal company from preparing to make good its threat to close the waterway in 1875.

[1] Phillimore, "Principles of International Law," Vol. I, p. 155.

But the dangers of 1877 showed clearly enough the advisability of some concerted action in the direction of neutralization, although as to how such should be effected was by no means so clear. So important did the latter question appear to the jurists of Europe that the *Institut du droit Internationale*, at its annual meeting in Zürich, at once appointed a committee, under the chairmanship of Sir Travers Twiss, to consider the best possible method of securing the immunity of the canal from hostile operations. At the annual meeting of the *Institut*, held in Paris during the course of the following year, this committee reported, but so much discussion arose over the exact import of the word "neutralization" that the Institute contented itself with expressing in general terms its opinion "that it is in the interest of all nations that the Suez Canal be declared, by an international act, free of any hostile attempt during war," reserving the details for future consideration. In 1879 a further report was submitted by the committee, in which four main principles were advanced:

1. That the Powers are agreed that complete freedom of passage through the canal should be always respected by belligerents in the case of ships of war, as well as private vessels.

2. That no troops or munitions of war should be landed along the canal without the consent of the territorial Power.

3. That should the territorial Power be at war, a reasonable time should be allowed to the trading vessels of the enemy to leave the canal.

4. That the *neutrality* of the canal ought to be respected, even when the territorial Power is belligerent.

No opposition was advanced by the members to the first three of the foregoing propositions, but much discussion arose as to what the term "neutrality" as employed in the final proposition, could be held to imply. M. de Martens, of St. Petersburg, advocated the "neutrality" of the waterway in the sense that it should, in time of war, be declared

entirely inaccessible to the warships of belligerents. Sir Travers Twiss pointed out that Great Britain would never be a party to any agreement such as would in time of war, cut off her marine connection with India. Professor Neumann suggested the possibility of creating a "Marine Belgium," but finally the Institute placed its views on record by voting three declarations:

1. That it is to the general interest of all nations that the maintenance of the Suez Canal and its use for communications of every kind shall be, as far as possible, protected by treaty.

2. With this object in view it is desirable that states should come to an arrangement with a view to avoiding, as far as possible, every act whereby the canal and its dependencies might be damaged in time of war.

3. If any Power should damage the works of the canal, it shall be bound to repair, as speedily as possible, the damage, and to re-establish full liberty of navigation.

These declarations were far from satisfying the more ardent advocates of a stringent international control, such as were Professors Martens and Bluntschli; their adoption was only secured through the influence of Mr. Holland. But the proceedings of the Institute—cited here in the absence of any diplomatic discussions on the matter—disclose that, despite the interplay of varied motions and interests, representative jurists of all nationalities were convinced of the desirability of rendering the canal inviolate in time of war through the medium of an international agreement. For, as motives in this direction, the political interests of several states were supplemented by the desire of shareholders in the canal company to obtain the greatest possible revenue in tolls and the wish of shipowners and forwarders of all countries for the securing of an unimpeded transit.

The idea of neutrality was, moreover, not a new one, although there had, as yet, been no instance of the successful application of the principle to the case of an arti-

ficial canal. Not only had territories such as those of Switzerland, Savoy, Belgium and Luxemberg been rendered immune from hostile operations, but the principle of neutrality had been extended to waters in case of the Black Sea—declared neutral by the Treaty of Paris in 1856.[1] The Clayton-Bulwer Treaty of 1850 had in one of its clauses contained the guarantee of the signatory Powers that the canal to be constructed across the Central American isthmus should be "forever open and free," while a treaty between the United States and New Granada (now Colombia) in 1846—renewed in 1870—had guaranteed the neutrality of the whole Isthmus of Panama.

But while the savants of the Institute were discussing the possibilities of a successful application of the principle of complete neutrality to the Asiatic gateway, the finances of Egypt reached the state which necessitated the joint intervention of Great Britain and France, the governments of which countries assumed control of the Pasha's financial affairs in the interest of European bondholders. A couple of years later came Arabi's revolt, upon which France, after vacillating in its attitude, threw the whole burden of Egyptian affairs upon British shoulders, with the result that the eventual British occupation of Egypt gave a new aspect to the whole question of canal neutralization, for the government of Great Britain now claimed a dominant voice as representing not alone the largest financial and commercial interest[2] in the canal, but as representing the territorial power as well. The canal company was, however, still completely under French influence and, during the early eighties English shipping interests had complained loudly of discrimination in favor of French commerce alleged to have been made by the canal officials. But

[1] "The Black Sea is neutralized. Its waters and ports, thrown open to the mercantile marine of every nation, are, formally and in perpetuity, interdicted to the flag of war of either of the Powers possessing its coasts or any other Power."—*Treaty of Paris, Art. XI.*

[2] In 1883 Great Britain owned nearly half the shares in the canal, while four-fifths of the traffic which passed through was British owned.—Dicey "Nineteenth Century" (August, 1883), pp. 189–205.

now that British influence in Egypt had become predominant, proposals began to be made looking toward the construction of a second canal which should be entirely under British control. In 1882, a proposal in this direction was actually laid before Parliament by the ministry of the day, but that body refused its ratification and the project of a second canal was allowed to drop. But the failure of this new project to receive Parliamentary concurrence served only to strengthen the attitude of the British Ministry with regard to the freedom of the existing channel—an attitude which, first declared in 1877, had been reiterated by Mr. Gladstone in a speech at the Mansion House in 1882, on which occasion he declared that "Egypt having become the great gate between East and West, it is essential for the industry and enterprise of mankind that the gate should be open." The events of 1882 had, however, even more than the events of 1877, shown the difficulty and the not improbable impossibility in certain eventualities of fully enforcing this canon of British policy for, during the course of the revolt, the temporary success of Arabi's forces, aided by the all but active sympathy of the canal officials, had almost succeeded in effecting the closure of the waterway to English commerce. The British Ministry concluded, therefore, that the difficulty would be removed by the permanent neutralization of the canal, under an international guarantee and, accordingly, on January 3, 1883, Lord Granville addressed a note to the Courts of Paris, Berlin, Vienna, Rome and St. Petersburg, looking toward the consummation of an agreement with this end in view. The direct causes of this proposal were given by Lord Granville under three heads: (1) the danger to which the canal had been exposed during the brief period of the success of the recent insurrection. (2) The altered circumstances resulting from the British occupation of Egypt in aid of the Khedive; and (3) the attitude assumed by the directors and officials of the canal company at a critical period in the course of the campaign.

The note contained a proposal embodied in eight clauses, suggesting, in general, that the canal should be free for the passage of *all* ships *in any circumstances;* that no hostilities should take place in the canal or in its approaches, even in the event of Turkey being one of the belligerents; that no troops or munitions of war should be disembarked on its banks nor fortifications erected thereon or in the vicinity; and that each government should be made liable for any damage done the canal by one of its public vessels. Finally, Lord Granville suggested the convening of an international congress to discuss the proposals advanced.

The British occupation of Egypt had, however, in the opinion of some of the continental powers put a new face on the whole question. France and Russia now conceived that their interests would be better served by the permanent neutralization, not of the canal alone, but of Egypt itself. In other words, the Suez question had become overshadowed by the Egyptian question. Thus the eminent Russian Jurist Professor Martens, in an article contributed to the "*Revue du droit Internationale*" about this time declared:

"The danger which menaces the canal in time of war, will be very sensibly diminished, if the permanent *neutralization of Egypt* is made an accomplished fact and if such is guaranteed by all the great European powers. In this case, the Egyptian government, established on a solid basis, can make its first object the guaranteeing of the security of the canal, and all the Powers guaranteeing will be obliged to defend Egypt against an attack, whether directed against the canal, or its inviolate territory."[1]

But an international congress for the discussion of the whole Egyptian question was not what the British government desired and for two years the adhesion of the Powers to Lord Granville's proposal of 1883 was not secured. In 1885, however, a convention of the Powers met in London to discuss certain matters relating to Egyptian finances and this

[1] "*La Question Egyptienne et le droit internationale*," Vol. xiv, pp. 355-402.

occasion the British foreign office seized to reiterate its proposals with regard to the security of the canal. And under instructions from their respective governments the delegates to the financial convention agreed that a further congress should be forthwith assembled at Paris to attempt "the establishment of a definite understanding, designed to guarantee, in all times and by all the Powers, the free usage of the Suez Canal." This congress was duly convened at Paris on March 30, 1885, the states represented being Germany, Austro-Hungary, Spain, France, Great Britain, Holland, Russia, Turkey and Egypt.[1]

At the outset the representatives of France and of Great Britain submitted projects which differed principally, not in regard to the nature of the neutralization, but in regard to the means whereby the maintenance of strict neutrality should be assured. The British representatives proposed to leave the enforcement of neutrality in the hands of the Khedive—this ruler being at the time under British control—while the French delegates desired rather the formation of a permanent international commission composed of representatives of the great Powers, together with a delegate from Turkey and one from Egypt, which should be charged with the duty of seeing that no infringement of the international agreement occurred. On the main question of the advisability of an international guarantee of neutrality there was complete unanimity, and the diverse interests of France and Great Britain were finally reconciled, as regards the mode of supervision, by the adoption of a compromise wherein provision was made that the execution of the agreement should rest, in the first place, with the Khedive, and, failing him, with the Porte; the Powers being duly advised and consulted by the latter. Accordingly, articles of agreement, to the number of seventeen in all, were drawn up and agreed

[1] Egypt was represented by Fakry Pascha, who had a consultative voice only in the proceedings. The British delegates to this congress were Sir Julian (now Lord) Pauncefote and Sir Charles Rivers-Wilson, the present president of the Grand Trunk Railway.

upon, by which the high contracting parties covenanted that the Suez Canal should be for all time "free and open, as well in time of war as in time of peace, to all ships both of commerce and of war, without distinction of flag," and bound themselves not to make any attack upon the channel nor "to exercise the right of blockade." The same immunity was to apply to the subsidiary fresh-water canal, and to the materials, works and appurtenances belonging to the company. The Maritime Canal was to rest, even in time of war, open to the war vessels of belligerents, but "no right of war, nor any act having for its result the obstruction of the freedom of navigation should be exercised within the canal nor in its ports of access, nor within a radius of three marine miles of its ports," even although the Ottoman Porte should be one of the belligerents. Moreover, the war vessels of belligerents "shall not, in the canal, nor in its ports of access, revictual or provision, except within the limits of strict necessity," and "the transit of such vessels shall be effected with the least possible delay." Further, it is provided in the Articles that the sojourn of belligerent warships at Port Said and in the roadstead of Suez "shall not be longer than twenty-four hours, save in the case of a forced putting into port." And where vessels of both belligerents happen to be contemporaneously in port, it is provided that an interval of at least twenty-four hours shall elapse between the time of their respective departures. Belligerents are bound not to disembark nor to take on, within the canal or its ports, "any troops, munitions or materials of war," but "in the case of an accidental obstruction of the channel, they may disembark or embark, in the ports of access, troops in bodies not exceeding one thousand men with stores and munitions in proportion." Prizes, *en route*, are, by the terms of the agreement, to be reckoned as vessels of war, and no signatory Power is to permanently maintain within the canal waters, any armed vessel. Nevertheless, in the ports of Port Said and Suez a permanent station of not more than two vessels

may be maintained by any Power so desiring, always provided that the Power so doing be not at the time a belligerent. The foregoing were the chief declaratory provisions; then follow provisions designed to ensure their execution.

In the first instance, the diplomatic agents in Egypt of the signatory Powers are charged with the duty of taking cognizance of any menace to the free passage of the canal or any threatened violation of the provisions agreed upon. They are to meet on the request of any three of their number—under the presidency of their dean—and to inform the Egyptian government of any apprehended or actual danger. In any case—whether danger appears or not—the agents are to meet annually under the presidency of a specially-appointed commissioner of the Ottoman Porte, or of their own accord, in the absence of this official, and to satisfy themselves that the provisions of the agreement have been observed.

The Egyptian government, on the receipt of information from the agents at Cairo of the signatory Powers, "shall take, within the limits of his powers . . . such measures as are necessary to secure the observance of the agreement." But in case the Egyptian government shall not have at its disposal sufficient means of doing this, it shall make appeal to the government of the Ottoman Empire, upon which shall then devolve the duty of taking such measures as are necessary to secure the observance of the international agreement respecting the canal; at the same time giving advice to the governments of the six great European Powers and, if need be, consulting with them on the matter.

It was provided, moreover, that the provisions of the agreement should not operate to prevent Turkey—or the Khedive acting in virtue of his authority conferred by firman—from taking such measures as might become necessary for the defence of their respective territories, provided always, that no hindrance to navigation ensued and that due notice of such necessity be given to the governments of the

six chief Powers by the Ottoman authorities. But this exception was not to be construed as permitting either the Turkish or Egyptian government to erect any fortifications within the neutralized area.

Finally the high contracting parties agreed, "by the application of the principle of equality in all that concerns the free usage of the canal—a principle which forms one of the bases of the agreement—that none among themselves should have any territorial or commercial advantages or privileges in the international arrangements made in regard to the canal." They likewise agreed to bring the agreement to the notice of such states as had not been represented in the congress and to invite their adhesion. Ratifications were to be exchanged at Constantinople "within the space of one month or as soon thereafter as possible," but it was not, however, until October 29, 1888, that these were formally given. The assent given by England was a qualified one, for it stipulated that the terms of the agreement should be held to bind Great Britain only when a settlement of the internal affairs of Egypt should have enabled her to withdraw her troops from that country. As it was generally understood by the Powers that the British occupation would be a matter of short duration, no objection seems to have been raised to this proviso in the assent given by the British representative at the time ratifications were exchanged. But the long-looked-for British evacuation of Egypt has not yet come, and it was upon this qualification that Mr. George (now Lord) Curzon, when Parliamentary Secretary for Foreign Affairs stated in the House of Commons a few years ago that Great Britain did not yet look upon the provisions of the international agreement as binding her own actions with regard to the Suez Canal.[1]

[1] On July 1, 1898, Mr. Davitt inquired in the House of Commons as to the breach of Article 4 of the Suez Canal Convention by Spanish ships of war remaining at Port Said beyond the twenty-four hours therein stipulated, to which Mr. Curzon replied: "The provisions of the Suez Canal Convention to which the honorable

Such, then, is the history of those rather extended steps through which the canal neutralization was eventually concluded. The significance of the matter as a precedent for the neutralization of similar future works was, indeed, great, but it was greatly lessened by the presence of several important attendant circumstances peculiar to the case, and care must, therefore, be had that the precedent be not given a too unqualified application. During the course of the negotiations between the United States of America and Great Britain in regard to the adoption of an understanding with reference to the proposed Nicaraguan Canal and during the course of the discussions upon the so-termed "Hay-Pauncefote Treaty," constant reference has been made to the Suez neutralization agreement as a pertinent precedent. But it is not so certain that the analogy holds good in every way. In the first place, it may be noted that in the case of the Suez Canal, negotiation for neutralization began after the work had been completed and after many nations had, by virtue of long-continued use, acquired a more or less vested interest in its free navigation. The company's charter had, as has been seen, provided that the waterway should always remain open as a *neutral passage* to all ships, and acting upon the assurance thus given, the commercial interests of the East and West had already entered into relations based upon the

member refers have never been brought into operation."—*Hansard, Fourth Series, Vol. 60, pp. 799–800.*

Subsequently, on July 12, 1898, Mr. Gibson Bowles asked a further question as to "whether the Convention was still in existence and in operation; and if not, when and under what circumstances the Convention had ceased to exist or to operate?" Mr. Curzon, in reply, said: "The Convention in question is certainly in existence; but, as I informed an honorable member in reply to a question some days ago, has not been brought into practical operation. This is owing to the reserves made on behalf of Her Majesty's government by the British delegates at the Suez Canal Commission."—*Hansard, Vol. 61, p. 667.*

The reservation made by the British delegates may be found on page 292 of Blue Book, Egypt, No. 19, and is as follows: "Aussi les Délegués de la Grande-Britagne . . . pensaient qu'il est de leur devoir de formuler une réserve générale quant à l'application de ses dispositions. En tant qu'elles ne seraient pas compatibles avec cette situation et qu'elles pourraient entraver la liberté d'action de leur gouvernement pendant la période de l'occupation de l'Egyptes par les forces de Sa Majeste Britannique.

assumption of an always-open transit *via* Suez. But in the case of the Nicaraguan Canal, proposal is made to secure the immunity from belligerent operations of a work which as yet does not exist, and in regard to which no *quasi*-rights of passage can have been acquired. The territorial power in Central America has not, moreover, stipulated that the canal shall be perpetually a *neutral passage*, and while the chartered company which undertook the construction of the Suez waterway was most persistent in its efforts to secure for it a guarantee of immunity—having only financial and not strategic interests to serve—the United States, as constructor of the Nicaraguan Canal, may not unreasonably find that political and strategic considerations require it to exert its efforts in just the opposite direction from that pursued by the Suez Company.

Again, one must bear in mind that the question of transit across the Isthmus of Suez, has, at all times been more or less closely connected with the greater Egyptian question. Egypt had been, as has been pointed out, for over half a century under the more or less strict control of the European Powers which, from the Convention of London in 1840, had treated the affairs of the Khedival State as their common property. Not only so, but being under Turkish suzerainty, Egypt and Egyptian affairs formed a factor in the greater "Eastern Question," in the handling of which the Powers of Europe had long since acquired vested rights. Let it be borne in mind, therefore, that the question of the *status* of the Suez Canal in time of war was *not an isolated one*, but formed a part of the Egyptian question and through it, of the Eastern Question, in dealing with which the various Powers of Europe had acquired the right to a predominant voice. The neutralization agreement was looked upon as being but one step in the settlement of the mass of intricate questions—many of them still unsettled—arising out of the rival ambitions of European states to acquire interests in the Levant.

And yet another—though, perhaps, not as important—point of difference may be noted. The neutralization of the Suez Canal was undertaken and effected through the co-operation of practically all the European states. The Nicaraguan negotiations are being conducted by two Powers only with the result that an eventual agreement would necessarily bind—in the first instance—those two states alone. It can scarcely be taken as a certainty that all other states would give an unqualified assent to an agreement in the formulation of which they had been given no voice whatever. No agreement between the United States and Great Britain can establish any guarantee of neutrality which shall be more than co-extensive with the ability of those two Powers to enforce the provisions in the event of an attempted violation by non-signatory states. In the case of the Suez provisions, deference was duly had to the wishes of all the states which had cared to send representatives, and important attractions in the original drafts were made in compliance with the wishes of such minor states as Spain and Holland. It may be added that all important neutralizations such as those of Savoy, Belgium, Luxemberg, the mouths of the Danube and the Black Sea, as well as that of the Suez Canal, have been the result, not of an agreement between the two individual states most directly concerned, but of a general international agreement.

The case of the Suez Canal, therefore, can scarcely be taken—as some British writers, and the British press generally, have been rather disposed to take it—as an unqualified precedent for the neutralization of the projected Nicaraguan Canal by means of an agreement between the governments of Great Britain and the United States. Furthermore, if we recall that Lord Palmerston stoutly opposed, at the very outset, the construction of the Suez Canal, on the ground that it would be detrimental to British commercial and political interests; that after its successful completion the British ministry refused to accept de Lessep's proposal for its

neutralization on the ground that "it was open to many objections of a political and practical character;" asserting instead that Great Britain would, by her own might, secure the immunity of the canal from hostile attack; that the earliest sign of British disposition to concur in an agreement for the neutralization of the Suez waterway came only after the English occupation of Egypt; and finally that, in the absence of any official disavowal of Lord Curzon's statement, Great Britain still stands unpledged to observe the terms of the agreement of 1885; if these features are borne in mind, it will be seen that, from a British standpoint, the precedent is not one to be ruthlessly advanced.

Nevertheless, the action of the various European states in relation to the Suez Canal marked an important victory for the general idea of the neutralization of important international works. The day now seems almost gone when large developments in international law can satisfactorily be effected through the agencies of logic or analogy. The jurists of the seventeenth and eighteenth centuries reasoned out the principles of their science; their successors, however, must chiefly build upon conventions between nations. As legal fictions and equity have ceased to be agents by which private law is extended or brought into harmony with the wants of society, and have given place to legislation; so in public law the *dicta* of text-writers count, as time goes on, for less and less while treaties and conventions import more and more.

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